

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

FRANCISCO E. ESCAMILLA,

Plaintiff,

v.

BELIN, et al.,

Defendants.

Case No. 2:21-cv-00077-KJD-VCF

ORDER

Presently before the Court is Defendant's Motion for Summary Judgment (#18). Plaintiff did not file a response in opposition, and the time to do so has passed. For the reasons stated below, Defendant's Motion for Summary Judgment is granted.

I. Factual and Procedural Background

This a pro se prisoner civil rights action brought by Plaintiff Francisco E. Escamilla ("Escamilla"), asserting a claim under 42 U.S.C. § 1983. Escamilla brings a claim against Defendants Michael Belin ("Belin") and Correctional Officer Rowley.¹

On January 9, 2019, the prison administration ordered a prison cell search within Escamilla's unit at Ely State Prison ("ESP"), and it was announced that officers would be searching the cells for pruno, which is prison wine.² (#7, at 3). Escamilla was kept in the shower until the search was completed. Id. Upon being escorted back to his cell, Escamilla alleges he arrived to find it destroyed. Id. at 4. Escamilla further alleges that the destructive and disruptive nature of the search was a violation of administrative regulations and operational procedures and that it was retaliation for a prior grievance and lawsuit Plaintiff filed. Id.

¹ Defendant Belin asserts that Correctional Officer Rowley has not been properly identified, as there are several Correctional Officers with the surname Rowley, and therefore, he is not a party to this motion.

² The facts are taken from the Court's Screening Order (#7).

On August 11, 2021, Escamilla brought suit against Defendants, Correctional Officers Belin and Rowley, asserting a First Amendment retaliation claim pursuant to 42 U.S.C. § 1983. (#6). Defendant Belin argues he is entitled to summary judgment, and qualified immunity, because there is no evidence he violated any constitutional right. (#18, at 6-11).

II. Legal Standard

Summary judgment may be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. See Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The moving party bears the initial burden of showing the absence of a genuine issue of material fact. See Celotex, 477 U.S. at 323. The burden then shifts to the nonmoving party to set forth specific facts demonstrating a genuine factual issue for trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

To defeat summary judgment, the nonmoving party must produce evidence of a genuine dispute of material fact that could satisfy its burden at trial.” Sonner v. Schwabe N. Am., Inc., 911 F.3d 989, 992 (9th Cir. 2018) (citation omitted). The failure to oppose a motion for summary judgment does not permit the court to enter summary judgment by default, but the lack of a response is not without consequences. Reberger v. Gutierrez, No. 2:21-CV-01250-CDS-VCF, 2022 WL 18024720, at *2 (D. Nev. Dec. 30, 2022) (citing Heineman v. Satterberg, 731 F.3d 914, 917 (9th Cir. 2013). Pursuant to Federal Rule of Civil Procedure 56(e), “If a party fails ... to properly address another party's assertion of fact ... the court may ... consider the fact undisputed for purposes of the motion” and “grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it[.]” Fed. R. Civ. P. 56(e)(2) & (3); Heinemann, 731 F.3d at 917.

III. Analysis

A. First Amendment Retaliation Claim

Escamilla alleges that Correctional Officers Belin and Rowley retaliated against him for filing a previous grievance and lawsuit. Prisoners have a First Amendment right to file prison

1 grievances and civil lawsuits. Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir. 2004). An inmate
 2 may establish a First Amendment retaliation claim by proving that “(1)... a state actor took some
 3 adverse action against [him] (2) because of (3) [his] protected conduct, and that such action (4)
 4 chilled [his] exercise of his First Amendment rights, and (5) the action did not reasonably
 5 advance a legitimate correctional goal.” Id. at 567-58.

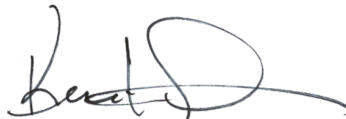
6 There is no evidence that Belin retaliated against Escamilla. Escamilla simply asserts,
 7 without offering any evidence, that Belin destroyed his cell and told him that there are “special
 8 searches for inmates who file lawsuits against correctional officers.” (#7, 3-4). However, Belin
 9 has provided numerous exhibits that support a finding that the search was properly conducted,
 10 and that the prison’s own investigation found no retaliation or wrongdoing. (See #18-2:6).
 11 Furthermore, Escamilla’s formal grievances make no mention of any statement made to him by
 12 Belin. (See #18-3). The Court’s concern when evaluating a motion for summary judgment is
 13 whether there exists genuine issues of material fact for a juror to find in favor of the nonmoving
 14 party. Escamilla has failed to present any evidence that there are any disputed facts. Therefore,
 15 summary judgment is granted for Belin on the retaliation claim.³

16 IV. Conclusion

17 Accordingly, **IT IS HEREBY ORDERED** that Defendant’s Motion for Summary Judgment
 18 (#18) is **GRANTED**.

19 **IT IS FURTHER ORDERED** that the Clerk of the Court enter **JUDGMENT** for Defendant
 20 Belin and against Plaintiff.

21 DATED this 31st day of August 2023.

22
 23 

24 Kent J. Dawson
 25 United States District Judge

26
 27 _____
 28 ³ Because Defendant is entitled to summary judgment, the Court foregoes addressing Defendant’s qualified immunity claim.